

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.259/Bang/2018
Assessment year: 2008-09

The Assistant Commissioner of Income Tax, Circle 1, Bellary.	Vs.	Tungabhadra Steel Products Ltd., Tungabhadra Dam, Hospet – 583 225. Karnataka. PAN: AA ACT 8126H
APPELLANT		RESPONDENT

Appellant by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	None

Date of hearing	:	07.07.2021
Date of Pronouncement	:	12.07.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order of the CIT(Appeals), Gulbarga dated 29.11.2017 for the assessment year 2008-09.

2. None appeared for the assessee-respondent at the time of hearing. However, we proceed to dispose of the appeal after perusing the material on record and hearing the ld. DR.

3. The revenue has raised the following grounds:-

“1. The order of the learned Commissioner of Income-tax (Appeals) is opposed to law and facts of the case.

2. In the facts and circumstances of the case, the Id. CIT(A), has erred in directing to allow the claim of the assessee company on account of interest provisions on loan obtained from Govt. of India ignoring the fact that the assessee company itself has worked out such liability on provisional basis.

3. In the facts and circumstances of the case, the Id. CIT(A), has erred in holding that disallowance made by the A.O. on account of interest liability to Govt. of India is not accordance with the law ignoring the fact that the assessee company has been declared as sick company since 04.08.2005 and has filed application under BIFR and thus, there is no intention of the assessee company to pay interest to Govt. of India debited to the profit and loss account.

4. In the facts and circumstances of the case, the Id. CIT(A), has erred in directing to allow the claim of the assessee company on account of interest due on loan obtained from Govt. of India ignoring the fact that the assessee company has not paid any interest to the Govt. of India since long time.

5. In the facts and circumstances of the case, the Id. CIT(A), has erred in holding that disallowance made by the A.O. on account of interest liability to Govt. of India is not covered under the provisions of section 43B of the Act ignoring the fact that the Assessing Officer has not invoked the provisions section 43B of the Act while disallowing the claim of assessee on account of interest provisions on loan obtained from Govt. of India.”

4. We have heard both the parties and considered the material on record. Similar issue came up for consideration in assessee's own case for the AY 2006-07 in ITA No.984/Bang/2017 before the Tribunal and vide order dated 27.10.2017 the Tribunal observed as follows :-

“We have heard the learned Departmental Representative and considered the relevant material on record. The assessee company has not paid interest towards the Govt. of India loan of Rs.12,71,90,551 but has debited the same on provisional basis. The Assessing Officer disallowed the interest on the ground that the assessee had no intention to pay interest liability to Govt. of

India and further when the interest was not actually paid then as per the provisions of Section 43B, the same is not allowable. On appeal, the CIT (Appeals) has deleted the addition made by the Assessing Officer in para 4.1.1 as under :

4.1.1 It is seen from the above that the main reason why the interest had been disallowed is because the AO feels that the assessee company had no intention of paying the interest liability to Government of India and hence needed to be disallowed. The fact that such interest is payable to Government of India on loan advanced is not disputed and the assessee had also filed a letter issued by the Pay & Accounts Office, Department of Heavy Industry, Public Enterprises confirming the Government of India Loan and the interest thereon. The AO's contention that the debit of interest liability to the P & L account is on provisional basis is not correct as the interest liability on a loan cannot be made on a provisional basis as it is an actual liability and an expenditure allowable under the Income Tax Act. Further, the said interest does not fall under the provisions of Sec.43B, so as to be allowed on payment basis, as interest payable to Government of India is not covered under the items prescribed for disallowance u/s.43B. Hence, the interest payable on

Government of India loan is allowable under the provisions of the Income Tax Act on accrual/due basis.

In addition to the interest debited for the relevant previous year, the AO had also disallowed the interest debited in the earlier years, shown as outstanding as on March 31st. The disallowance of interest debited in the earlier years' is not proper and is against the provisions of the Income Tax Act, 1961 and hence the same is deleted.

Thus it is clear that the assessee has not written off the liability but it is showing in the books of accounts as liability payable to Govt. of India. Further the interest does not fall under the provisions of Section 43B and therefore we do not find any error or illegality in the impugned order of the CIT (Appeals) qua this issue.”

5. We therefore do not find infirmity in the order of CIT(Appeals) in deleting the addition made on account of disallowance of interest on loans due to Govt. of India. We uphold the order of the CIT(Appeals) to this extent.

6. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 12th day of July, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 12th July, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.